

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2662

PETITION OF NEW CINGULAR WIRELESS PCS, LLC

OPINION OF THE BOARD

(Opinion Adopted June 14, 2006)
(Effective Date of Opinion: July 13, 2006)

Case No. S-2662, Petition of New Cingular Wireless PCS, LLC is an application for a special exception for a telecommunication facility, pursuant to Section 59-G-2.58 of the Montgomery County Code, to permit the installation of nine antennae, related equipment and twelve-foot high screening wall on the roof of a three-story building known as Burkland Condominiums. In a separate, related request, Cingular and Burkland have requested administrative modification of Burkland's existing special exception, Case No. S-684, to allow the addition of the antennae to it.

The Hearing Examiner for Montgomery County held a hearing on the application on March 20, 2006, held the record in the case open until April 21, 2006, and on May 22, 2006, issued a Report and Recommendation for approval of the special exception, with conditions.

The subject property is Lot P-71, located at 10313 Georgia Avenue, Silver Spring, Maryland, 20902, in the R-60 Zone.

Decision of the Board:	Special Exception Granted, Subject To Conditions Enumerated Below.
------------------------	---

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on June 14, 2006. The Board also had before it a request for Oral Argument on the Report and Recommendation of the Hearing Examiner from James R. Michal, Esquire, on behalf of New Cingular Wireless PCS. Mr. Michal requested to be allowed to give argument regarding proposed Condition Nos, 3, 4, 5 and 7 in the Report and Recommendation.

Condition No. 3 calls for removal of the telecommunication facility when it has not been in active use for a period of more than six months. Condition No. 4 calls for an amended application designating Burkland Condominium, Inc., owner of the subject property, as a co-petitioner. Condition No. 5 would require the applicant to submit documentary evidence into the record verifying that the proposed facility will comply with all applicable Federal Communications Commission emission standards. Condition No. 7 calls for the applicant to reduce the intensity of emissions whenever repairs or other work are to be conducted on the roof close to where the antennas will be located.

After careful consideration, and review of the record in the case, the Board finds that Condition No. 3 is consistent with the provisions of Section 59-G-1.3(d)(i) of the Zoning Ordinance that a special exception is generally considered abandoned after a six-month period of disuse, and should be adopted. The Board finds that Condition No. 4, requiring Burkland Condominium to be a co-holder of the special exception is not required under Section 59-G-2.58. Moreover, Burkland's underlying special exception will be modified to make the antennae part of that special exception. The Board finds that this condition is not necessary. The Board further finds that it is pre-empted by Section 704(a) of the 1996 Telecommunications Act from imposing the requirements contained in proposed Condition Nos. 5 and 7, and does not adopt them.

On a motion by Caryn L. Hines, seconded by Angelo M. Caputo, with Wendell M. Holloway and Donna L. Barron, Vice-Chair in agreement and Allison Ishihara Fultz, Chair necessarily not participating, the Board denies the request for Oral Argument, adopts the Hearing Examiner's Report, with the amendments to conditions described above, and grants the special exception subject to the following conditions:

1. Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in the Hearing Examiner's report and in the Board's opinion.

2. The maximum number of nine panel antennae shall be permitted, six of which will be no longer than two feet and three no longer than 54.4 inches. The tops of the antennae will be flush with the tops of the screening walls to which they are attached. The screening walls shall not exceed a height of twelve feet. Screening walls and antennae will be colored to match the exterior of the Burkland condominium building.

3. All equipment associated with the telecommunication facility must be removed at the cost of petitioner New Cingular Wireless PCS (or its successors) or, failing that, by petitioner Burkland Condominium, Inc. (or its successors) when the facility is no longer in active use by any telecommunication carrier for more than six months.

4. The telecommunication facility must display (1) a contact and warning information sign, no larger than two square feet, affixed to the screening wall outside the equipment platform on the side that provides access into the enclosure and (2) a similar sign on the triangular structure so that it easily visible to anyone working near the structure. The signs will be positioned not to be visible from street level. They must identify the owner and the maintenance service provider for the facility and provide the telephone number(s) of one or more persons to contact regarding the facility. A dated photograph of the signs must be provided to the Board of Appeals upon installation. The sign must be updated and the Board of Appeals notified within ten days of any change in ownership.

5. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes, regulations, directives, and other governmental requirements.

Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of July, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.